Supreme Court, U.S.
FILED

No. 001292 FEB 12 2001

OFFICE OF THE CLERK

In The

Supreme Court of the United States

ROBERT H. BARRETT,

Petitioner,

v.

BOROUGH OF CARLISLE,

Respondent.

On Petition For Writ Of Certiorari
To The Commonwealth Court Of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

Volume 2

Robert H. Barrett
Petitioner, *pro se*
136 East High Street
Carlisle, Pennsylvania 17013
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APPENDIX A

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

No. 692 M.D. Alloc. Dkt. 2000

Petition for Allowance of Appeal from Commonwealth Court

BOROUGH OF CARLISLE,
Respondent

v.

ROBERT H. BARRETT,
Petitioner

ORDER

PER CURIAM

AND NOW, this 8th day of January, 2001, the petition for allowance of appeal is denied.

APPENDIX B

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 423 C.D. 2000
SUBMITTED: May 12, 2000

BOROUGH OF CARLISLE

v.

ROBERT H. BARRETT,
Appellant

BEFORE: HONORABLE DORIS A SMITH, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE WILLIAM J. LEDERER, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE LEDERER

FILED: August 23, 2000

The issues presented are whether the Court of Common Pleas of Cumberland County (trial court) abused its discretion by entering a default judgment against Robert H. Barrett (Barrett) or in framing the content of the amended final decree. We hold that Barrett waived the issue of whether the trial court abused its discretion in entering a

default judgment by not raising the issue before us, and the trial court did not abuse its discretion in framing the content of the amended final decree. Thus, the order of the trial court is affirmed.

The relevant facts of this case are as follows. On July 22, 1998, the Borough of Carlisle (Borough) filed a complaint in equity against Barrett, the owner of eleven properties in the historic district of the Borough. The complaint was the result of years of refusal by Barrett to bring his properties into compliance with the Borough's BOAC Property Maintenance Code (Code) and Historic District regulations. The complaint avers that, commencing in 1992, the Borough cited Barrett on a continuous basis for well over one hundred and seventy (170) Code violations. Barrett had also unsuccessfully challenged the regulations in the Historic District Ordinance. See Barrett v. Borough of Carlisle, 707 A.2d 250 (Pa. Cmwlth. 1998), petition for allowance of appeal denied, 555 Pa. 714, 724 A.2d 350 (1998).

On October 7, 1999, Barrett was adjudicated in civil contempt for failing to comply with the trial court's order of June 3, 1999, which required him to answer interrogatories and produce documents. As a result, Barrett was committed to the Cumberland County Prison on October 13, 1999, with the condition that he might purge his contempt by complying with the order of June 3, 1999.[1] When Barrett continued to fail to comply with the discovery order, he was released from

---

[1] Barrett was also imprisoned for civil contempt between July 7 and August 17, 1999, for failure to allow entry for inspection of the eight improved properties. He was released from prison when he finally complied with that requirement.

prison on November 22, 1999, and the following order was entered by the trial court:

> (1) If defendant fails to respond completely to the interrogatories and production of documents required by this court's order of June 3, 1999, not later than Wednesday, December 1, 1999, the following relief will be ordered:
>
> (a) a default judgment will be entered in favor of plaintiff and against defendant;
>
> (b) an agent will be appointed to manage defendant's eleven properties within the Historic District of the Borough of Carlisle in order to bring those properties into compliance with the Code and Historic District regulations;
>
> (c) an injunction will be issued prohibiting defendant from performing any repairs or alterations to any of his properties without first receiving certificates of appropriateness and building permits for such work;
>
> (d) the Borough will be awarded reasonable attorney fees in this action;
>
> (e) a further hearing will be conducted for the issuance of additional equitable relief necessary to effectuate the aforesaid provisions.
>
> (2) Defendant is released from his commitment to the Cumberland County Prison pursuant to the orders of October 7 and 13, 1999.

Barrett continued to ignore the trial court's June 3, 1999 order that he respond to the request for interrogatories and production of documents. On December 30, 1999, a hearing

was conducted for the purposes of entering a final decree. On January 14, 2000, the trial court entered default judgment against Barrett and in favor of the Borough. The trial court filed an amended final decree on January 24, 2000 granting the Borough the equitable relief it sought in its complaint, including the appointment of an agent to manage the eight improved properties owned by Barrett for the purpose of bringing those properties into compliance with Code and Historic District regulations. The amended final decree also awarded attorneys' fees against Barrett and in favor of the Borough. Barrett then filed an appeal with this Court.

On appeal,[2] Barrett acting pro se, does not argue that the trial court abused its discretion in entering the default judgment against him. Instead, he argues the underlying merits of the Borough's complaint against him. Barrett also argues that the final amended decree was not based on substantial evidence and that it violated his constitutional rights.

The trial court entered a default judgment against Barrett as a sanction for Barrett not complying with a discovery order. The decision to open a default judgment is left to the sound discretion of the trial court which must determine that: (1) the petition to open was promptly filed; (2) there was a reasonable excuse for the failure to comply; and (3) a meritorious defense is shown. Borough of Kennet Square v. Lal, 645 A.2d 747 (Pa. Cmwlth. 1994). In the case

[2] Our review in equity actions is limited to a determination of whether the trial court's findings of fact are supported by substantial evidence, whether an error of law has been made, or whether the trial court abused its discretion. King v. Township of Leacock, 552 A.2d 741 (Pa. Cmwlth. 1989).

at bar, Barrett never filed a petition to open the default judgment with the trial court. Nor does he argue on appeal that the trial court abused its discretion by entering the default judgment. Issues to which an appellant develops no argument and cites no authority are waived. Commonwealth v. Luktisch, 680 A.2d 877 (Pa. Super. 1996). Thus, the issue as to whether the trial court abused its discretion in entering the default judgment is waived.

Barrett does argue that the final amended decree issued by the trial court results in a constitutional "taking" of his property. In Borough of Kennet Square, however, this Court approved a similar remedy to force a property owner to bring his property into compliance with the borough's housing ordinance. We held that where an owner of an apartment complex receives hundreds of citations for violating the borough's housing ordinances, remedies at law are inadequate to insure the ordinances' enforcement and, thus, it was appropriate for the trial court to provide equitable relief in the form of an appointment of an agent to manage the apartment complex.

In the case at bar, the trial court clearly did not abuse its discretion by entering the final amended decree. The record is clear that Barrett is unwilling to cooperate with the Borough and bring his property into compliance with the Borough's codes and ordinances. Barrett was put on notice as to what would be the result of his continued disregard of the trial court's order and was given more than ample opportunity to comply with both the Borough and the trial court's reasonable requests. The final amended decree allows Barrett to retain ownership of this property and ensures that all properties will be brought into compliance. Barrett's

peripheral challenges to the final amended decree are without merit.

Accordingly, the order of the trial court is affirmed.

WILLIAM J. LEDERER, Senior Judge

****

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 423 C.D. 2000

BOROUGH OF CARLISLE

v.

ROBERT H. BARRETT,

Appellant

ORDER

AND NOW, this 23rd day of August, 2000, the order of the Court of Common Pleas of Cumberland County in the above-captioned matter is hereby affirmed.

WILLIAM J. LEDERER, Senior Judge

APPENDIX C

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY, PENNSYLVANIA

No. 98-4145 Equity Term

BOROUGH OF CARLISLE,
Plaintiff

v.

ROBERT H. BARRETT,
Defendant

AMENDED FINAL DECREE

AND NOW, this 24th day of January, 2000, the FINAL DECREE entered on January 14, 2000, **IS AMENDED:**

(1) A default judgment is entered in favor of plaintiff and against defendant.

(2) Judgment in the amount of $12,302.48 is entered in favor of plaintiff and against defendant for attorneys' fees.

(3) Defendant is enjoined from performing any repairs or alterations to any of his properties without (a) first receiving certificates of appropriateness and building permits for such work, and (b) the approval of this court to perform the work in lieu of it being performed by the hereinafter appointed agent.

(4) The Redevelopment Authority of the County of Cumberland is appointed agent to manage, for the purpose of

bringing into compliance with Code and Historic District regulations, the following eight improved properties of defendant in the Borough of Carlisle: (1) 29 South East Street; (2) 35 South Bedford Street; (3) 37 South Bedford Street; (4) 122 East Liberty Avenue; (5) 25 North Bedford Street; (6) 134 East High Street; (7) 136 East High Street; and (8) 138 East High Street.

(5) The agent shall post security in the amount of $1.00 with the Prothonotary.

(6) The following shall apply to the agent's performance of its duties:

(a) it shall have joint possession and control of the eight improved properties and defendant shall not in any way interfere with or obstruct the agent or anyone acting under its direction in the performance of its duties;

(b) for each property, it shall obtain two private bids itemizing the cost of repairs necessary to bring it into compliance with all Code and Historic District regulations;

(c) as the bids are received for each property, it shall forward both bids to defendant at his mailing address of 134 East High Street, Carlisle, PA 17013, by regular mail and also by certified mail, return receipt requested and restricted delivery;

(d) defendant shall have fifteen days from receipt of the certified mail, or ten days from the date of its return by the postal service as "unclaimed" or "refused," to deliver to the agent funds sufficient to pay for the amount of the lower bid;

(e) upon receipt of such funds from defendant in the amount of the lower bid, it shall have the work performed;

(f) should defendant fail to timely deliver such funds it may expend its own funds or it may arrange for financing for said work, and it may apply to the court to order that a mortgage lien be placed on defendant's property having sufficient equity to provide security for the debt incurred;

(g) after completion of the work, it shall send defendant by regular mail a statement of its costs;

(h) should defendant default in making timely payment of the repairs and costs within fifteen days of such mailing, the agent shall apply for an order of court for authorization to sell such property under terms and conditions approved by the court, and for an award of its costs;

(i) the costs can include: (1) any wages or other compensation of its staff and employees for time reasonably incurred in performing its duties; (2) invoices from any independent contractors retained to assist in the performance of its duties; (3) out-of-pocket expenses; (4) premiums for casualty and liability insurance for each property (unless defendant provides evidence of adequate coverages); (5) any deductibles incurred in defending any claims arising out of the performance of its duties; (6) any and all interest incurred by agent under its line of credit with Keystone Financial Bank or any other borrowing resulting from defendant's failure to make any payments in a timely

manner; (7) any legal fees incurred by agent in the performance of its duties; and (8) any other reasonable costs;

(j) should the proceeds of any sale exceed the cost of repairs and the agent's costs, the excess amount shall be retained and applied to repairs to other properties;

(k) in the event the agent obtains financing it may, with court approval, arrange to place a mortgage lien on the premises;

(l) the above procedure shall be followed with respect to each successive property although the agent may perform its duties concurrently on any of the eight properties;

(m) the agent shall respect the rights of any tenants, and to the extent possible all work should be performed without disturbing their peaceable possession;

(n) all tenants shall pay the agent all rent at the rate payable this date during the term of the performance of its duties, and the agent shall apply such rent to property repairs as authorized by this order;

(o) upon completion of its duties, the agent shall file an accounting with the Court as to all funds received and expenditures made;

(p) any funds remaining with the agent at the time of such accounting shall be distributed to defendant;

(q) defendant may file exceptions to the accounting;

(r) the agent may seek a judgment against

defendant for any deficiency in the amount paid for all repairs and all of its costs;

(s) the agent may petition to amend this order if necessary or desirable to effectuate its purpose.

(7) Defendant shall within seven days of the date of this order provide keys for all properties to agent.

(8) If defendant does not provide keys to the properties to agent, the agent may make forced entry into such property and change the locks.

(9) Within seven days of the date of this Order, defendant shall provide to agent copies of all current written leases as well as copies of any casualty and liability policies in effect, which policies shall be amended to name agent as an additional insured thereunder.

(10) Defendant shall hold agent harmless from any and all claims, costs, and expenses incurred by it in the proper performance of its duties.

(11) Upon application of plaintiff, the Court will consider an award of any additional attorney fees incurred.

(12) This court retains jurisdiction in equity for the enforcement of this order.

By the Court,

_____

Edgar B. Bayley, J.

APPENDIX D

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY, PENNSYLVANIA

No. 98-4145 Equity Term

BOROUGH OF CARLISLE, Plaintiff

v.

ROBERT H. BARRETT, Defendant

ORDER OF COURT

AND NOW, this 13th day of October, 1999, following a hearing, and pursuant to this court's order of civil contempt entered on October 7, 1999, and defendant having not purged himself of contempt as of this date, defendant is committed to the Cumberland County Prison until he complies with the order of October 7, 1999, which requires compliance with the order of June 3, 1999. Upon compliance defendant shall advise this judge in writing. The solicitor of the Borough of Carlisle shall then forthwith notify this court if he believes that there has been compliance. Counsel fees are awarded to the Borough of Carlisle in the amount of $981. Pursuant to the order of contempt of October 7, 1999, defendant shall pay such counsel fees in full not later than December 1, 1999.

By the Court,

_____

Edgar B. Bayley, J.

APPENDIX E

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY, PENNSYLVANIA

No. 98-4145 Equity Term

BOROUGH OF CARLISLE, Plaintiff

v.

ROBERT H. BARRETT, Defendant

ORDER OF COURT

AND NOW, this 7th day of July, 1999, I adjudicate you in civil contempt of court for violating this Court's inspection order of June 3, 1999. You are committed to the Cumberland County Prison until you purge yourself of contempt. You may purge yourself of contempt by advising me at any time that you will comply with the inspections as required by the order of June 3, 1999, and at that point I will then immediately set a new inspection schedule, and I will then have a sheriff take you to the first scheduled inspection, and if you comply with that inspection order, you may remain out of prison for as long as you continue to purge yourself of contempt by allowing all further inspections as scheduled. Defendant is to stand committed in civil contempt until the conditions of purge are met or he obtains a supersedeas from an Appellate Court.

By the Court,

_____

Edgar B. Bayley, J.

APPENDIX F

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY, PENNSYLVANIA

No. 98-4145 Equity Term

BOROUGH OF CARLISLE,
Plaintiff

v.

ROBERT H. BARRETT,
Defendant

PETITION TO VACATE AN ORDER OF COURT

NOW COMES Defendant, Robert H. Barrett (herein, "Barrett"), a *pro se* litigant, and requests your Honorable Court vacate the June 03, 1999 Order of Court in this action. In support thereof, Barrett avers the following:

1. Barrett is the owner of eleven (11) parcels of real estate situated within the Borough of Carlisle (herein, "the Borough"), Cumberland County, Pennsylvania. Eight (8) of the eleven (11) properties are improved with buildings.

2. The parcels of real estate are situated in what is known as the Carlisle Historic Preservation District (herein, "the Historic District").

3. On July 09, 1998, Barrett filed a lawsuit in the U.S. District Court for the Middle District of Pennsylvania at Civil No. 4:CV-98-1109 challenging the certification of the Historic District. The Federal Complaint is pending in U.S. District Court.

4. On July 22, 1998, in retaliation, the Borough filed the present lawsuit requesting that the Court appoint an agent to manage Barrett's eleven (11) properties within the Historic District.

5. On June 03, 1999 the Court issued an Order authorizing the Borough to search Barrett's eight (8) improved properties **without probable cause**, in violation of the Fourth Amendment to the United States Constitution. A copy of the Order is attached as Exhibit A.

6. The searches authorized by the June 03, 1999 Order are scheduled to commence on June 21, 1999 and continue through June 24, 1999.

7. The entry upon Barrett's properties authorized by the June 03, 1999 Order is "for the purpose of inspecting, measuring, photographing, videotaping, testing, sampling, or analyzing the said properties and all fixtures for code violations."

8. The "inspections" authorized by the June 03, 1999 Order are broad, unrestricted intrusions upon Barrett's properties and constitute "searches" under the Fourth Amendment to the United States Constitution.

9. Barrett avers that a separate search warrant is required for each property which sets forth the probable cause for the search, the nature of the evidence sought, and limiting conditions of the search.

10. The June 03, 1999 Order failed to identify the "code" against which the Borough is authorized to conduct its searches for violations.

11. The June 03, 1999 Order failed to state any

finding of probable cause against Barrett's properties collectively upon which to base searches of Barrett's properties.

12. The June 03, 1999 Order failed to state any finding of probable cause against Barrett's individual properties upon which to base a search of any individual property.

13. One (1) of the eight (8) properties to be searched is Barrett's personal residence at 136 East High Street, Carlisle.

14. The June 03, 1999 Order failed to state any finding of probable cause against Barrett's personal residence at 136 East High Street upon which to base a search of that property.

15. On the eight (8) properties authorized for search by the June 03, 1999 Order, four (4) have never been found in violation of any property maintenance code.

16. Of the eight (8) properties authorized for search by the June 03, 1999 Order, two (2) were cited for minor violations involving porch railings. One (1) of these properties is occupied, while the other is vacant. In both cases, access to the porches has been blocked, thereby eliminating any public safety hazard.

17. Of the eight (8) properties authorized for search by the June 03, 1999 Order, Barrett has been attempting to demolish three (3) of the buildings since February 1996, but has been prevented from doing so by the Borough.

18. And finally, of the eight (8) properties authorized for search by the June 03, 1999 Order, one is an old garage

condemned by the Borough as "likely" to collapse and repeatedly cited, in spite of the fact that (1) the building was never in danger of collapse, (2) no one has ever been hurt by the condition of the building, and (3) Barrett has invested tens of thousands of dollars in repairing the building, in spite of the Borough's repeated denial of building permits.

19. On June 01, 1999, the Cumberland County Court of Common Pleas heard on-record argument on the Borough's motion to compel compliance with their discovery requests, including the Borough's request for entry upon Barrett's properties.

20. Barrett has requested preparation of a transcript of the June 01, 1999 on-record argument.

21. At the June 01, 1999 on-record argument, the Borough presented no statement of facts or evidence against Barrett's properties to establish probable cause for general entry upon all eight (8) of Barrett's improved properties.

22. At the June 01, 1999 on-record argument, the Borough presented no argument for entry upon any individual property owned by Barrett and established no probable cause for such action.

23. At the June 01, 1999 on-record argument, the Borough presented no argument for entry upon Barrett's personal residence at 136 East High Street and established no probable cause for such action.

24. The Court violated the Fourth Amendment to the United States Constitution by authorizing the Borough to search Barrett's eight (8) improved properties without probable cause.

25. The Court violated the Fourth Amendment to the United States Constitution by authorizing a general, unrestricted search of Barrett's eight (8) improved properties.

AND FURTHER:

26. The June 03, 1999 Order overruled Barrett's objection to Interrogatory 5 which required insurance policy information on each of Barrett's properties. The Court has failed to identify the relevance of this information to any law or regulation governing the maintenance of Barrett's properties.

27. The June 03, 1999 Order overruled Barrett's objection to Interrogatory 14 which required information on the purchase price, current debt, monthly payments, names of occupants, reason structure is not occupied, and amounts spent on maintenance on each of Barrett's properties. The Court has failed to identify the relevance of this information to any law or regulation governing the maintenance of Barrett's properties.

28. The June 03, 1999 Order overruled Barrett's objection to Interrogatory 15 which required information on maintenance, repairs, improvements, betterment or demolition, and on whether building permits were applied for and issued for each of Barrett's properties. The Court has failed to identify the relevance of this information to any law or regulation governing the maintenance of Barrett's properties.

29. The June 03, 1999 Order overruled Barrett's objection to Production Request 6 which required all rental records, inclusive of income and expense statements for each of Barrett's properties. The Court has failed to identify the

relevance of this information to any law or regulation governing the maintenance of Barrett's properties.

30. The June 03, 1999 Order overruled Barrett's objection to Production Request 7 which required all records reflecting income, of any nature, and expenses for each of Barrett's properties. The Court has failed to identify the relevance of this information to any law or regulation governing the maintenance of Barrett's properties.

31. The June 03, 1999 Order overruled Barrett's objection to Production Request 11 which required copies of the declaration pages of each insurance policy applicable to each of Barrett's properties. The Court has failed to identify the relevance of this information to any law or regulation governing the maintenance of Barrett's properties.

WHEREFORE, Defendant, Robert H. Barrett, prays the Court issue an Order to Vacate an Order of Court issued June 03, 1999 in the present lawsuit, based on failure by Plaintiff, Borough of Carlisle, (1) to establish probable cause for entry upon Barrett's eight (8) improved properties, and (2) to establish the relevance of Interrogatories 5, 14, and 15 and of Production Requests 6, 7, and 11 to any law or regulation governing the maintenance of Barrett's properties.

Dated: June 14, 1999 By: _____

Robert H. Barrett
Defendant, *pro se*
134 East High Street
Carlisle, PA 17013

APPENDIX G

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY, PENNSYLVANIA

No. 98-4145 Equity Term

BOROUGH OF CARLISLE,
Plaintiff

v.

ROBERT H. BARRETT,
Defendant

OPINION IN SUPPORT OF ORDER DATED JUNE 3, 1999

Bayley, J., June 23, 1999:

On July 22, 1998, plaintiff, the Borough of Carlisle, instituted this equity action against defendant Robert H. Barrett. Based on a litany of alleged continuing Borough Code violations by Barrett who is the owner of eleven properties in the historic district of Carlisle, the Borough sought the following equitable relief:[1]

> A. **That an agent be appointed to manage Barrett's eleven properties within the historic district in order to bring the properties into compliance with the code and historic district**

---

[1] The alleged violations and the extensive enforcement history are in detail averred in the Borough's seventy-three paragraph complaint.

regulations; and

B. That an injunction issue against Barrett prohibiting him from performing any repairs or alterations to any of his properties without first receiving certificates of appropriateness and building permits for such work; and

C. That the Borough be awarded its reasonable attorneys fees in this action, and all previous actions, between the parties; and

D. Such other equitable relief as the Court deems appropriate under the circumstances. (Emphasis added.)

Barrett filed preliminary objections to the complaint which were dismissed on February 9, 1999. This court was satisfied that plaintiff, pursuant to the **Borough of Kennet Square v. Lal**, 165 Pa. Commw. 573 (1994), has stated a complaint upon which a trial should be had on its claims for relief.

The Borough of Carlisle sought discovery in the form of answers to interrogatories and a motion to compel the production of documents. It also made a request to inspect the eight improved properties subject to this dispute. Defendant refused to allow the inspection of the properties and disputed much of the discovery requested. On June 3, 1999, following a hearing on plaintiff's motion to compel compliance with its requests, the following order was entered:

I. OBJECTIONS OF DEFENDANT TO PLAINTIFF'S INTERROGATORIES

1. Interrogatory No. 1. The objection **IS SUSTAINED** because the information sought is not relevant.

2. Interrogatory No. 2. The objection **IS SUSTAINED** except that defendant shall state his annual salary and any other income for the years 1996, 1997, 1998 and 1999 to date.

3. Interrogatory No. 5. The objection **IS OVERRULED**. Defendant shall answer this interrogatory in its entirety.

4. Interrogatory No. 7. Because defendant has identified only himself as an expert who will be called to testify, and he has answered the interrogatory with respect to himself, the objection **IS SUSTAINED**.

5. Interrogatory No. 10. The objection **IS SUSTAINED** because the information sought is not relevant.

6. Interrogatory No. 14. The objection **IS OVERRULED**. Defendant shall answer this interrogatory in its entirety.

7. Interrogatory No. 15. The objection **IS OVERRULED**. Defendant shall answer this interrogatory in its entirety.

8. Interrogatory No. 16. The objection **IS SUSTAINED** as the information sought is not relevant.

9. Interrogatory No. 17. The objection **IS SUSTAINED** as the information sought is not relevant.

10. All interrogatories that defendant is ordered to answer as set forth above shall be answered within twenty (20) days of this date.

II. PLAINTIFF'S MOTION TO COMPEL DEFENDANT TO COMPLY WITH PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS

1. Request No. 2. **IS DISMISSED** as overbroad.

2. Request No. 6. The motion **IS GRANTED.** Defendant shall provide plaintiff with such documents.

3. Request No. 7. The motion **IS GRANTED.** Defendant shall provide plaintiff with such documents.

4. Request No. 8. **IS DISMISSED** as not relevant.

5. Request No. 9. **IS DISMISSED** as defendant was issued any such permits by plaintiff who has knowledge of them.

6. Request No. 10. **IS DISMISSED** as overbroad.

7. Request No. 11. The motion **IS GRANTED.** Defendant shall provide such documents to plaintiff.

8. All documents that defendant is ordered to produce as set forth above shall be produced within twenty (20) days of this date.

III. REQUEST FOR INSPECTION OF IMPROVED PROPERTIES OF DEFENDANT AT 25 NORTH BEDFORD STREET, 35 SOUTH BEDFORD STREET, 37 SOUTH BEDFORD STREET, 122 EAST LIBERTY AVENUE, 134 EAST HIGH STREET, 136 EAST HIGH STREET, 138 EAST HIGH STREET, AND 29 SOUTH EAST STREET

1. The request for the inspection of the aforesaid improved properties, which is opposed by defendant, **IS GRANTED**.

2. A group of up to six people may enter said properties, those people being one borough representative, the borough solicitor, a photographer who may be a borough representative, a real estate appraiser, a structural engineer and a contractor.

3. The entry of each property shall be for the purpose of inspecting, measuring, photographing, videotaping, testing, sampling, or analyzing the said properties and all fixtures and for code violations.

4. Each inspection may last for up to three hours.

5. The inspection schedule shall be as follows:

a. The inspection of 25 North Bedford Street shall commence at 9:00 a.m., Monday, June 21, 1999.

b. The inspection of 35 South Bedford Street shall commence at 1:00 p.m., Monday, June 21, 1999.

c. The inspection of 37 South Bedford Street shall commence at 9:00 a.m., Tuesday, June 22, 1999.

d. The inspection of 122 East Liberty Avenue

shall commence at 1:00 p.m., Tuesday, June 22, 1999.

e. The inspection of 134 East High Street shall commence at 9:00 a.m., Wednesday, June 23, 1999.

f. The inspection of 136 East High Street shall commence at 1:00 p.m., Wednesday, June 23, 1999.

g. The inspection of 138 East High Street shall commence at 9:00 a.m., Thursday, June 24, 1999.

h. The inspection of 29 South East Street shall commence at 1:00 p.m., Thursday, June 24, 1999.

6. Defendant shall provide complete access to these properties by the inspectors and shall not interfere with said inspections.

7. This inspection schedule may only be altered upon agreement of both parties for their convenience.

On June 21, 1999, defendant filed an appeal to the Commonwealth Court of Pennsylvania, from the interlocutory order of June 3, 1999, complaining that the order allows "Plaintiff, Borough of Carlisle to search eight (8) of Defendant's improved properties without probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the things to be seized." Besides being an improper appeal from an interlocutory order[2] the order does not provide, as defendant maintains, for an illegal search of defendant's property or the seizure of anything. To the contrary, the order specifically

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[2] Interlocutory orders are not appealable as of right as they can only be appealed by permission. Pa. Rule of Appellate Procedure 1311; **Department of Transportation v. Lakeview Motel, Inc.**, 81 Pa. Commw. 262 (1984).

limits the entry of plaintiff's agents into defendant's property:

> [f]or the purpose of inspecting, measuring, photographing, videotaping, testing, sampling, or analyzing the said properties and all fixtures for code violations.[3]

The order was entered pursuant to Pa. Rules of Civil Procedure 4009.31 and 4009.32 that provide:

> **RULE 4009.31 ENTRY UPON PROPERTY FOR INSPECTION AND OTHER ACTIVITIES. GENERAL PROVISIONS**
>
> Any party may serve a request upon a party pursuant to Rule 4009.32 . . . to permit entry upon designated property in the possession or control of the party or person upon whom the request is served for the purpose of inspecting and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rules 4003.1 through 4003.6 inclusive.
>
> **RULE 4009.32 REQUEST FOR ENTRY UPON PROPERTY OF A PARTY**

---

[3] The Borough has filed a motion to hold Barrett in contempt of the order for failing to allow entry for the scheduled inspections at 25 North Bedford Street and 35 South Bedford Street on June 21, 1999. A Rule to show cause was issued with a hearing set for July 7, 1999. The effect of even a proper petition to file an interlocutory appeal pursuant to Pa. Rule of Appellant Procedure 1311 is not to stay the proceedings in the trial court unless it is so ordered by that court or the Appellate Court. Pa. Rule of Appellate Procedure 1313

(a) The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the original process upon that party. The request shall describe with reasonable particularity the property to be entered and the activities to be performed.

The conditions of the subject improved properties are relevant and admissible, and therefore within the scope of Pa. Rule of Civil Procedure 4003.1(a) and (b), and go to the heart of plaintiff's claim for equitable relief. Defendant apparently thinks that this is a criminal rather than a civil case.

June 23, 1999

Edgar B. Bayley

APPENDIX H

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY, PENNSYLVANIA

No. 98-4145 Equity Term

BOROUGH OF CARLISLE, Plaintiff

v.

ROBERT H. BARRETT, Defendant

ORDER OF COURT

AND NOW, this 23rd day of April, 1999, the motion of defendant to allow the issuance of a subpoena to the Pennsylvania Historical and Museum Commission, **IS DENIED.**[1]

By the Court

_____

Edgar B. Bayley, J.

---

[1] 1. The issue is res judicata. **Barrett v. Borough of Carlisle**, 96-2446, May 5, 1997, aff'd 707 A.2d 250 (Pa. Commw. 1998), petition for allowance of appeal denied 724 A.2d 350 (Pa. 1998).

APPENDIX I

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY, PENNSYLVANIA

No. 98-4145 Equity Term

BOROUGH OF CARLISLE,
Plaintiff

v.

ROBERT H. BARRETT,
Defendant

MOTION TO ALLOW ISSUE OF A SUBPOENA AGAINST THE PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION

AND NOW, comes Defendant, Robert H. Barrett, *pro se*, and hereby files the following Motion to Allow Issue of a Subpoena Against the Pennsylvania Historical and Museum Commission (herein, "the State Commission"). An identical copy of Defendant's Subpoena is attached as Exhibit A.

1. Defendant moves the Court for an Order allowing the issue of a subpoena duces tecum against the State Commission for production of documents relating to the State Commission historic certification processes whereby the Carlisle Historic District was allegedly certified in 1975.

2. On March 29, 1999, Defendant served upon Plaintiff a Notice of Intent to Serve a Subpoena Pursuant to Rule 4009.21.

3. On April 01, 1999, Plaintiff filed Objections to

Subpoena Pursuant to Rule 4009.21.

4. Defendant avers that the State Commission denied him substantive and procedural due process protections of the Fifth and Fourteenth Amendments of the United States Constitution during State Commission historic certification processes whereby the Carlisle Historic District was allegedly certified in 1975.

5. As a consequence of the State Commission's denial of due process protections during historic certification processes, certification of the Carlisle Historic District is invalid.

6. Because the Carlisle Historic District is invalid, Plaintiff is without authority to regulate property based on its location within the Carlisle Historic District.

7. Under the substantive and procedural due process protections of the Fifth and Fourteenth Amendments of the United States Constitution, Defendant has the right to judicial review of the State Commission historic certification processes whereby the Carlisle Historic District was allegedly certified in 1975.

8. The decision of the United States Supreme Court in Penn Central Transportation Company v. New York City, 438 U.S. 104 (1978) does not deny substantive or procedural due process protections of the Fifth and Fourteenth Amendments of the United States Constitution to historic certification processes or to judicial review of those processes.

9. Plaintiff incorrectly objects to the Subpoena on grounds that the validity of the certification of the Carlisle Historic District is barred by the principle of *res judicata*.

Under Pennsylvania law, *res judicata* precludes a subsequent action when there has been a prior judgment on the merits and there is a concurrence of four conditions; (1) an identity of the thing sued upon; (2) an identity of the cause of action; (3) an identity of the persons and parties to the action; and (4) an identity of the quality or capacity of the parties suing or being sued. There is no identity of conditions (1), (2), and (4) between the present action and Case No. 98-2446 Civil Term, Cumberland County of Common Pleas cited by Plaintiff in their objections. Thus, the issues raised by Defendant are not barred by *res judicata.*

WHEREFORE, Defendant, Robert H. Barrett, prays the Court issue an Order to Allow Issue of a Subpoena Against the Pennsylvania Historical and Museum Commission in accordance with Pa.R.C.P. No. 4009.21(d)1. An identical copy of the Subpoena is attached as Exhibit A.

Dated: April 19, 1999 By: _____

Robert H. Barrett
Defendant, *pro se*
134 East High Street
Carlisle, PA 17013

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY, PENNSYLVANIA

No. 98-4145 Equity Term

BOROUGH OF CARLISLE,
Plaintiff

v.

ROBERT H. BARRETT,
Defendant

REQUEST OF ROBERT H. BARRETT FOR PRODUCTION OF DOCUMENTS DIRECTED TO PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION

PURSUANT to Pa.R.Civ.P. 4009.1, please provide legible copies of the following documents which may be in the possession, custody or control of the Pennsylvania Historical and Museum Commission or any of its designated representatives. Requested documents existed on or before October 1, 1975 and concern the alleged review by the Pennsylvania Historical and Museum Commission of the proposed Carlisle Historic District, which review culminated in the certification of the Carlisle Historic District on October 1, 1975, with the following exception. The alleged notification document or other record of the final certification decision by the Pennsylvania Historical and Museum Commission was created on or after October 1, 1975.

This Request for Production of Documents is deemed continuing and supplemental documents should be provided.

NOTE: As referred to in this Request, "documents" includes written, printed, typed, recorded or graphic matter, however produced or reproduced, including correspondence, telegrams, other written communications, electronic files, data processing storage units, tapes, contracts, agreements, notes, memoranda, analyses, projections, indices, work papers, studies, reports, surveys, diaries, calendars, films, photographs, diagrams, drawings, minutes or transcripts of meetings or hearings, or any other material in the possession, custody or control of the Pennsylvania Historical and Museum Commission, their former or present counsel, agents, employees, officers, insurers or any other persons acting on behalf of the Pennsylvania Historical and Museum Commission.

Requested documents include the following:

1. All documents existing on or before October 1, 1975 that describe and verify the procedures followed by the Pennsylvania Historical and Museum Commission during its alleged review of the proposed Carlisle Historic District, which review culminated in the certification of the Carlisle Historic District on October 1, 1975. Documents shall include written procedures, public notices, individual notifications of property owners, proofs of receipt, records or transcripts of public meetings or hearings, and any other relevant materials.

2. All documents existing on or before October 1, 1975 that describe and verify the criteria used by the Pennsylvania Historical and Museum Commission in their

alleged evaluation of the proposed Carlisle Historic District, which review culminated in the certification of the Carlisle Historic District on October 1, 1975.

3. All documents existing on or before October 1, 1975 that constitute the supporting evidence for the alleged certification decision by the Pennsylvania Historical and Museum Commission, which decision culminated in the certification of the Carlisle Historic District on October 1, 1975. Documents shall include correspondence, written or typed papers, expert or staff reports, technical analyses, surveys, property lists, pictures or photographs, maps, preservation plans, ordinances, records of hearings or meetings, and any other relevant materials.

4. All documents or other records created on or after October 1, 1975 that allegedly describe and verify the final decision by the Pennsylvania Historical and Museum Commission certifying the Carlisle Historic District in 1975.

Respectfully submitted,

Dated: March 29, 1999 By: _____

Robert H. Barrett
Defendant, pro se
134 East High Street
Carlisle, PA 17013

APPENDIX J

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY, PENNSYLVANIA

No. 98-4145 Equity Term

BOROUGH OF CARLISLE, Plaintiff
v.

ROBERT H. BARRETT, Defendant

REQUEST FOR ENTRY UPON PROPERTIES FOR INSPECTIONS AND OTHER ACTIVITIES

TO: Robert H. Barrett
134 East High Street
Carlisle, Pennsylvania 17013

AND NOW, this 26th day of March, 1999, pursuant to Pennsylvania Rule of Civil Procedure No. 4009.31, *et. seq.*, as amended, comes the Borough of Carlisle, by its Solicitor, Edward L. Schorpp, Esq., and requests the above named Defendant to permit entry upon the exterior and interior of the following designated real estate in the ownership, possession, and control of the Defendant for the purpose of inspecting, measuring, photographing, videotaping, testing, sampling, or analyzing the said properties and all fixtures and appurtenances located thereon or therein.

The real estate which is the subject matter of this request is located in the Borough of Carlisle, Cumberland County, Pennsylvania, and consists of the land and

improvements of the following properties:

(1) 25 North Bedford Street
(2) 35 South Bedford Street
(3) 37 South Bedford Street
(4) 122 East Liberty Avenue
(5) 134 East High Street
(6) 136 East High Street
(7) 138 East High Street
(8) 29 South East Street

Entry will commence on Tuesday, May 4, 1999, at 9:00 o'clock a.m. continuing through 4:30 o'clock p.m., prevailing time, and on succeeding days, during the same hours, until all properties have been fully inspected.

Entry will be made by officials and employees of the Borough of Carlisle, the Carlisle Borough Solicitor, a real estate appraiser, a structural engineer, a building contractor, and photographer/videographer, all of the foregoing to be selected by the Borough of Carlisle. During said entry and inspection, the value of each property, its structural integrity, and its costs of restoration shall be determined, and inspection shall include any other matter relevant to the above captioned proceedings.

March 26, 1999 By: _____

Edward L. Schorpp, Esq.
Solicitor, Borough of Carlisle
127 West High Street
Carlisle, Pennsylvania 17013

APPENDIX K

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY, PENNSYLVANIA

No. 98-4145 Equity Term

IN EQUITY

JURY TRIAL DEMANDED

BOROUGH OF CARLISLE,
Plaintiff

v.

ROBERT H. BARRETT,
Defendant

Plaintiff, through its attorney, hereby propounds the following Interrogatories to defendant pursuant to Pennsylvania Rule of Civil Procedure 4006 to be answered within thirty (30) days from service thereof. These Interrogatories shall be deemed to be continuing Interrogatories. If, between the time of your answer to said Interrogatories and the time of the trial of this case you, or anyone acting on your behalf, learns the identity and whereabouts of any other witnesses not identified in your said answers, or if you obtain or become aware of additional requested information not supplied in your answers, you shall promptly furnish the same to plaintiff's attorney by a supplemental answer.

For the purposes of these Interrogatories, "you" or

"your" refers to the defendant and his files, the defendant's insurance companies and the agents or representatives of the defendant and his files. "You" shall further include all persons on whose behalf defendant prosecutes this action and all persons who will benefit or be legally bound by the results of this action. Your answer to the Interrogatories shall reflect and contain the knowledge of all the above persons.

References to plaintiff and/or defendant shall be interpreted as singular or plural, depending upon the particular circumstances of each case.

The term "description" or "describe" as used herein shall mean that the defendant shall set forth the name and address of the author or originator, dates, title or subject matter, the present custodians of the original and of any copies and the last known address of each custodian. "Document" shall mean any written, printed, typed or other graphic matter of any kind, whether handwritten, typed or printed, whether distributed or undistributed. It shall include without limitation letters, memoranda, articles, studies, notebooks, diaries and notes, as well as all mechanical and electronic sound recordings or transcripts thereof in the possession or control of the defendants or known by them to exist. It shall also mean all copies of documents by whatever means made.

Answer each interrogatory in the space following the interrogatory. Supplemental sheets may be attached which require additional space. Please take notice that you are required to serve upon the undersigned your answers in writing within thirty (30) days pursuant to the Pennsylvania Rules of Civil Procedure. These Interrogatories are deemed continuing and supplemental answers should reasonably be

provided.

1. Please state your present residence address, present state of domicile, date of birth, marital status, social security number, and each of your residences for the past ten years giving the dates of residence at each.

ANSWER:

2. State the extent of your formal education, your place of employment, the name of your employer, your job classification, the nature of your employment, the telephone number of your immediate supervisor and his or her name, and your annual salary and other income for the past seven years.

ANSWER:

3. List the names and addresses of persons known or believed by you or any person acting on your behalf, to have any knowledge concerning the matters averred in the Complaint and Answer in this action, and with regard to each person, state:

(A) his or her name;
(B) his or her present mailing address;
(C) his or her present telephone number; and
(D) a summary of the knowledge this person is purported to have.

ANSWER:

4. List the names and addresses of each fact witness you intend to call to trial, and briefly summarize their anticipated testimony.

ANSWER:

5. Give the carrier name, policy number, and policy limits for each and every policy insuring each of the parcels of real estate owned by you in the Borough of Carlisle; also state the nature of coverages under each.

ANSWER:

6. State the name, address, and occupation of any person whom you expect to call as an expert witness at trial, and with regard thereto, state:

(A) the subject matter on which the expert is to testify;
(B) the facts and opinions to which the expert is to testify;
(C) a summary of the grounds of each opinion;
(D) the name of any report, memorandum, or transcript used to substantiate each opinion;
(E) any code, regulation, or standard, governmental or otherwise, alleged by the expert to have been or not been violated, in whole or in part;
(F) any standard scientific principle alleged by the expert to have been or not have been violated, in whole or in part;
(G) any standard manufacturing/construction principle alleged by the expert to have been or not have been violated, in whole or in part; and
(H) the date, name and author of any textbook, document, or other source relied upon by the expert in rendering his opinion and testimony.

ANSWER:

7. With regard to each individual you expect to call as an expert witness at trial, state the following:

(A) Date of birth;

(B) Name and address of present employer; and if self-employed, name and address of the business;

(C) Full formal educational background, with dates of attendance and degrees obtained;

(D) a list of all writings and/or documents of any kind prepared in whole or in part by the expert; and

(E) names and addresses of all persons, firms or corporations who have retained this expert in the past ten years to render a report or testify as an expert witness.

ANSWER:

8. Are you or anyone acting on your behalf in possession of, or know of the existence of, any photographs, blueprints, sketches, drawings, diagrams, or plans of the instrumentalities, locales, equipment, tools, buildings, structures, land or any other thing or matter involved or averred in the Pleadings in this case? If so, state:

(A) The nature of the document, the name(s) and address(es) of the person(s) preparing such document, and the date of its preparation;

(B) The name(s) and address(es) of the person(s) presently having possession or custody of each such document;

(C) The specific subject matter of the document;

(D) The date it was made or taken; and

(E) What the document purports to show, illustrate or represent.

ANSWER:

9. Have you or anyone acting on your behalf conducted any investigations of the matters averred in the

Complaint or Answer and which are the subject matter of the Complaint or Answer? If so, identify:

(A) Each person and the employer of each person who conducted any investigations;
(B) The dates of investigations; and
(C) All notes, reports or other documentation prepared during or as a result of the investigations, and the identity of the person(s) who have possession thereof.

ANSWER:

10. Have you ever been convicted of a crime? If so, state:

(A) The nature of the conviction; and
(B) The date and location of said conviction.

ANSWER:

11. Have you made any statement, whether in writing, tape recording, or otherwise, to any person(s) regarding any of the events referred to in the Complaint or Answer? If so, state;

(A) The name(s) and address(es) of the person(s) to whom such statement was made;
(B) The date of such statement;
(C) The form of the statement, i.e., written, oral, recording device, or stenographer;
(D) Whether such statement, if written, was signed; and
(E) The name(s) and address(es) of the person(s) presently having custody of such statement.

ANSWER:

12. If you, your attorneys or former attorneys, or other representatives know of any other individuals not previously named in the answers to these Interrogatories who may have knowledge regarding any aspect of the subject action of the investigation thereof or whom you may call at trial to testify regarding some aspect of the subject action, please state:

(A) the name and last known address and telephone number of each;

(B) a brief statement of the information which you believe each such individual to have;

(C) the circumstances by which said individual came to have any such knowledge;

(D) if there is a signed or recorded statement from each such individual, please identify who took the statement, the date the statement was taken, and attach a copy of each such statement to answers to these Interrogatories.

ANSWER:

13. Please identify all exhibits which you intend to offer at the trial of this matter and state the purpose for which each is offered.

ANSWER:

14. For each parcel of real estate situate in the Borough of Carlisle in which you have an ownership interest, state:

(A) whether such parcel is vacant or improved with a structure or structures and identify the type(s) of structure;

(B) the deed reference of your deed;

(C) the date of acquisition;

(D) the purchase price;

(E) whether or not it is encumbered by debt and identify the creditor, current unpaid balance owing, required monthly payment and record reference;

(F) whether the structure is occupied and by whom, and if not, the last date it was occupied during your ownership and by whom;

(G) the reason the structure is not occupied;

(H) the total sum you have spent for maintenance, repair, improvement or betterment, or demolition of such property since the date of your purchase; and

(I) if you removed, or caused to be removed, any structure on the parcel, state when the structure(s) were removed and the reason for removal.

ANSWER:

15. For each property identified in the foregoing Interrogatory, state the following:

(A) identify any work you performed on each property in the nature of maintenance, repairs, improvements, betterment or demolition;

(B) for each work identified in the preceding subsection, state whether or not you applied for any building permits to perform such work; and

(C) for each work identified in the preceding subsection, whether or not you obtained any building permits to perform such work.

ANSWER:

16. For each of the last seven calendar years list each

asset owned by you during each of said years, specifically identifying the asset and corresponding value.

ANSWER:

17. For each of the last seven calendar years, list each liability outstanding against you in each such year and the corresponding amount of such liability.

ANSWER:

These Interrogatories shall be deemed to be continuing. If between the time of your answers to these Interrogatories and the time of trial of this case, you or anyone acting on your behalf learn the identity and whereabouts of any other witness(es) not identified in your answers, or if you obtain or become aware of additional requested information not supplied in your answers, you shall promptly furnish same to the undersigned by supplemental answers.

Dated: January 7, 1999

_____

Edward L. Schorpp, Esq.

APPENDIX L

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY, PENNSYLVANIA

No. 98-4145 Equity Term

IN EQUITY

JURY TRIAL DEMANDED

BOROUGH OF CARLISLE,
Plaintiff

v.

ROBERT H. BARRETT,
Defendant

REQUEST OF BOROUGH OF CARLISLE FOR PRODUCTION OF DOCUMENTS DIRECTED TO ROBERT H. BARRETT

TO: Robert H. Barrett
Pro Se

PURSUANT to Pa. R.C.P. 4009, please furnish at our office, on or not later than thirty (30) days after service of this Request, a photostatic copy or like reproduction of the following materials concerning this action or its subject matter which are in your possession, custody or control.

1. All photographs in the possession, custody or control of the Defendant, or any other person acting on behalf of the Defendant, including any insurers, showing,

representing or purporting to show any locales, land, structures, instrumentalities, and any and all other matters related to the subject matters of this litigation.

2. All diagrams, sketches, drawings, plans, measurements, or blueprints in the possession, custody or control of Defendant, or any other person or entity acting on behalf of said Defendant, including any insurer showing, representing, or purporting to show any of the instrumentalities, locales, structures or other matters involved in the matters averred in the Complaint.

3. All statements, signed statements, transcripts of recorded statements or interviews, recorded statements, or any statement of recorded statements, if not transcribed verbatim, taken of any parties, persons, or witnesses as part of an investigation of the matters averred in Plaintiff's Complaint and Defendant's Answer, conducted by, or in the possession of, Defendant, insurers, or anyone else acting on behalf of Defendant.

4. All expert opinions, reports, summaries, or other writings of experts in the possession, custody or control of Defendant, or insurers, which relate to the subject matter of this litigation.

5. All documents prepared by Defendant, or by any insurers, representatives, agents or anyone acting on behalf of Defendant during an investigation of any aspect of any of the matters raised in the Complaint or Answer in this action. Such documents shall include any documents made or prepared up through the present time, with the exclusion of the mental impressions, conclusions, or opinions respecting the value or merit of a claim or defense, or respecting

strategy or tactics.

(**NOTE:** As referred to therein, "documents" includes written, printed, typed, recorded or graphic matter, however, produced or reproduced, including correspondence, telegrams, other written communications, data processing storage units, tapes, contracts, agreements, notes, memoranda, analyses, projections, indices, work papers, studies, reports, surveys, diaries, calendars, films, photographs, diagrams, drawings, minutes of meetings or any other writing [including copies of the foregoing, regardless of whether the parties to whom this request is addressed is now in the possession, custody or control of the original] now in the possession, custody or control of Defendant, his former or present counsel, agents, employees, officers, insurers, or any other persons acting on Defendant's behalf.)

6. All written rental records, inclusive of income and expense statements, for each of the properties owned by Defendant in the Borough of Carlisle.

7. All records reflecting all income, of any nature whatsoever, and all expenses relating to each of the properties owned by you in the Borough of Carlisle during your period of ownership.

8. Copies of your complete personal income tax returns, both federal and state, for the past seven years.

9. Copies of all building permits obtained by you relating to each property owned by you in the Borough of Carlisle during your period of ownership.

10. All financial statements prepared during the last

seven years which reflect the total value of your assets and liabilities for any period during said seven year period.

11. Copies of the declaration pages of each policy of insurance applicable to each parcel of real estate owned by you in the Borough of Carlisle.

Respectfully submitted,

Dated: January 01, 1998 By: _____

Edward L. Schorpp, Esq.
I.D. No. 17495
Solicitor for the Borough of Carlisle
127 West High Street
Carlisle, Pennsylvania 17013

APPENDIX M

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY, PENNSYLVANIA

No. 98-4145 Equity Term

BOROUGH OF CARLISLE, Plaintiff

v.

ROBERT H. BARRETT, Defendant

ANSWER TO COMPLAINT

AND NOW, comes Robert H. Barrett, pro se, and files this Answer to Complaint and, in support of dismissal thereof, answers as follows:

1. Admitted.

2. Admitted in part and denied in part. It is admitted that Defendant, Robert H. Barrett, uses the address of 134 East High Street, Carlisle, Pennsylvania for the purpose of receiving mail. Defendant denies that the address of 134 East High Street, Carlisle, Pennsylvania is used for purposes other than to receive mail.

3. Denied. It is denied that Defendant has claimed to be a resident of the Borough of Carlisle. It is further denied that Defendant is a resident of the Commonwealth of Virginia.

4. Admitted.

5. Admitted in part and denied in part. It is admitted

that the Historic Preservation District (herein, "the Historic District") established by the Borough of Carlisle (herein, "the Borough") in August 1975 is for naming purposes, only. It is denied that the Historic District established by the August 1975 ordinance conveyed lawful authority to the Borough to regulate property based on its location within the Historic District.

6. Admitted in part and denied in part. It is admitted that the Borough attempted to incorporate Historic District regulations into its zoning regulations in 1988. It is denied that Historic District regulations are properly incorporated in the Borough's zoning regulations. Zoning regulations properly involve the "use" of property, while Historic District regulations attempt to regulate the simple "appearance" of property independent of its use.

7. Admitted.

8. Admitted in part and denied in part. It is admitted that Defendant owns two (2) properties at 25 and 29 South East Street which are zoned residential. It is denied that each of there residential properties has buildings situated thereon. Defendant avers that the property at 25 South East Street is a vacant lot seeded in grass, has no buildings situated thereon, and is not used for any public purpose. Defendant further avers that the property at 29 South East Street has situated thereon a single family house occupied by tenants.

9. Admitted in part and denied in part. It is admitted that Defendant owns properties at 118, 122, and 141-143 East Liberty Avenue which are zoned residential. It is denied that each of these residential properties has buildings situated thereon and that such buildings are accessible to persons

other than the Defendant. Defendant avers that the property at 118 East Liberty Avenue is a parking lot and has no buildings situated thereon. Defendant avers that the property at 122 East Liberty Avenue has situated thereon a single family row house, has been continuously vacant since 1993, and is not accessible to persons other than the Defendant. Defendant avers that the property at 141-143 East Liberty Avenue is a parking lot and seeded lawn, and that the property has no buildings situated thereon.

10. Admitted in part and denied in part. It is admitted that Defendant owns three (3) properties at 25 North Bedford Street, 35 South Bedford Street, and 37 South Bedford Street. It is admitted that the property at 25 North Bedford Street is zoned commercial and that the properties at 35 and 37 South Bedford Street are each zoned residential. It is denied that each of the buildings situated thereon are accessible to persons other than the Defendant. Defendant avers that the property at 25 North Bedford Street has situated thereon a large brick garage/warehouse. Defendant avers that each of the properties at 35 South Bedford Street and at 37 South Bedford Street has situated thereon a multi-family row house. Defendant avers that the property at 35 South Bedford Street is occupied by tenants. Defendant avers that the property at 37 South Bedford Street has been continuously vacant since 1990 and that the building is not accessible to persons other than the Defendant. Defendant avers that the commercial property at 25 North Bedford Street is not accessible to persons other than the Defendant.

11. Admitted in part and denied in part. It is admitted that Defendant owns property at 134, 136, and 138 East High Street each of which is zoned residential. It is denied that

any of these buildings is occupied or accessible to persons other than the Defendant. Defendant avers that each of these three (3) properties has erected thereon a row house. Defendant avers that he occupies the house at 136 East High Street and that the houses at 134 and 138 East High Street are vacant.

12. Admitted in part and denied in part. It is admitted that the Borough has cited Defendant's properties for public safety hazards and that the Court has dismissed the majority of these citations. It is denied that Defendant has been found guilty of numerous violations. Defendant avers that most of the citations were against the garage/warehouse at 25 North Bedford Street and were caused by severe wind damage to the roof and to damage caused by a car accident in which a car ran into the building.

13. Admitted in part and denied in part. It is admitted that in June of 1979, Defendant's property at 118 East Liberty Avenue suffered fire damage. It is denied that the fire resulted from any lack of maintenance or repair on the part of Defendant. Defendant avers that based on the police report, the tenant of the property was intoxicated and fell asleep while smoking on a couch in the livingroom.

14. Admitted in part and denied in part. It is admitted that Defendant did not repair the fire damaged building to its previous condition. It is denied that Defendant did nothing to the fire damaged building. Defendant avers that he removed the fire damaged contents of the building and secured the building.

15. Denied. It is denied that Defendant was prosecuted prior to demolition of the building at 118 East

Liberty Avenue for commencing demolition without a building permit. Defendant avers that he attempted to obtain a permit to demolish the fire damaged building at 118 East Liberty Avenue, but was denied a permit by Borough officials.

16. Admitted in part and denied in part. It is admitted that Defendant demolished the structure at 118 East Liberty Avenue. It is denied that the Borough ever issued a demolition permit for the building. Defendant avers that following the Borough's refusal to issue a demolition permit for the fire damaged building at 118 East Liberty Avenue, Defendant demolished the building.

17. Admitted.

18. Admitted in part and denied in part. It is admitted that Defendant gutted the interior of the building at 25 South East Street. It is denied that Defendant gutted the building without the required approvals. It is denied that Defendant stored debris from the gutted house in the garage at 25 North Bedford Street. Defendant avers that he applied for two (2) building permits for the property at 25 South East Street, which at that time had erected thereon a multi-family frame house. One (1) permit was to demolish the structure. The second permit was to gut the interior of the building which would have to be done independent of whether the building was demolished or remodeled. The Borough denied the permit to demolish the structure, but approved the permit to gut the inside of the building. Plaster debris from gutting the house was thrown into the cellar of the building as fill, wood debris was burned in a wood stove, and non-flammable material was hauled to a dump.

19. Denied. It is denied that gutting the house had any structural effect on the house. It is denied that gutting the house made the house economically unfeasible to repair. Defendant avers that a primary purpose for gutting a house is to allow inspection of its structural members and internal systems to determine the feasibility of making repairs. Defendant avers that gutting the house involved removed plastering, floor coverings, wiring, plumbing, heating ducts, and non-bearing internal walls which had no structural effect on the house Gutting the house uncovered structural problems which existed before the house was gutted. The main sills of the house on which the wall studs rested were found to be badly deteriorated. The economic feasibility of repairing the house was also not effected by gutting the house. In order to make repairs to the house, the house would still have to be gutted in order to remove the old materials.

20. Denied. It is denied that Defendant's action in gutting the house was intended to make the building structurally deficient and economically unfeasible.

21. Admitted in part and denied in part. It is admitted that Borough Council eventually granted Defendant approval to demolish the house and that Defendant did demolish the house. It is denied that Defendant initiated a second action to demolish the house and that Borough Council reluctantly granted the request. Defendant avers that the Borough asked Defendant to submit a second request which it assured Defendant would be approved.

22. Admitted in part and denied in part. It is admitted that Defendant owns a garage at 25 North Bedford Street. It is denied that Defendant uses the garages to store debris or

other trash. Defendant avers that he has salvaged some reusable framing and form lumber from demolished buildings which he has used in the repair of the garage at 25 North Bedford Street and other properties.

23. Admitted in part and denied in part. It is admitted that the Borough's sent Defendant notice of "codes violations." It is denied that any of the "codes violations" actually constituted a public safety hazard.

24. Denied. It is denied that the roof of the garage at 25 North Bedford Street fell into any further disrepair. Defendant avers that the only damage to the roof resulted when a severe wind tore the sheet metal covering the roof loose at the front edge and rolled the sheet metal over the top of the roof and onto the back side. Removing the sheet metal covering from the front of the roof did no structural damage to the roof, but did allow water to enter the building.

25. Admitted with qualification. It is admitted that Defendant was eventually found guilty on these citations following appeal to the Commonwealth Court which vacated the Common Pleas Court's original decision. The Commonwealth Court sent the case back to the Common Pleas Court for failure to identify what Defendant had been convicted of.

26. Admitted with qualification. It is admitted that the Court found Defendant guilty on the citations. Defendant avers that in spite of the fact that Defendant had applied for a permit to demolish the house at 25 South East Street and had been denied the permit by the Borough, the Borough continued to cite Defendant for public safety hazards based on the condition of the house. Further, Defendant avers that

at 29 South East Street, Defendant was cited for a missing railing on a second floor porch, in spite of the fact that the porch was inaccessible from the ground without a ladder and that the door to the porch was locked.. The Borough argued that if there was ever a fire in the building, a fireman might fall off the porch.

27. Admitted with qualification. It is admitted that the Commonwealth Court eventually upheld the convictions on the citations. Defendant avers that in spite of the Borough's repeated claims that Defendant's properties constitute public safety hazards, no one has ever been injured as a result of the condition of Defendant's properties in the twenty-eight (28) years that Defendant has owned property in Carlisle.

28. Admitted with qualification. It is admitted that the Common Pleas Court affirmed the condemnation of the garage at 25 North Bedford Street based solely on review of procedural aspects of the case. Defendant avers that the Court did not review the technical determinations as to whether the garage actually constituted a public safety hazard. Defendant further avers that in spite of the Borough's predictions that the roof of the garage and one of the exterior walls was "likely" to collapse, the building has not collapsed and is in no danger of collapse.

29. Admitted with qualification. It is admitted that the condemnation order was dismissed by the Commonwealth Court for failure by Defendant to go forward with the appeal. The Commonwealth Court never heard the case.

30. Admitted in part and denied in part. It is admitted

that the Court twice found Defendant to be in contempt of the condemnation order. On October 05, 1995, Defendant was found guilty of refusing to allow a group of six (6) Borough employees to enter the garage at 25 N. Bedford Street, unannounced, and for the purpose of simply looking around. On September 09, 1996, Defendant was found guilty of storing equipment and materials in the garage and for working in the garage. It is denied that the garage was a hazard either to the public or to the Defendant. It is denied that condemnation of the building was justified.

31. Admitted in part and denied in part. It is admitted that on October 11, 1996, the Borough filed sixty (60) citations against Defendant for three (3) specific conditions at the garage at 25 North Bedford Street. It is denied that these conditions violated the Building Officials and Codes Administrators (BOCA) Code.

32. Admitted with qualification. It is admitted that on July 24, 1997, the Court found the Defendant guilty on twenty (20) citations and not guilty on forty (40) citations.

33. Admitted in part and denied in part. It is admitted that the Court exercised its discretion in the administration of justice and imposed less than the maximum fines allowed against Defendant. It is denied that the Court "expressly found that there was sufficient evidence to find Barrett guilty beyond a reasonable doubt on all of the citations."

34. Admitted in part and denied in part. It is admitted that to date, Defendant has paid part but not all of the 1997 fines imposed. It is admitted that to date the Defendant has made more than $55,000 in repairs to the garage. It is denied that necessary repairs to the garage have not been made.

35. Admitted in part and denied in part. It is admitted that Defendant periodically receives correspondence from Borough officials identifying purported violations of the BOCA Code by Defendant's properties. It is denied that these purported violations do, in fact, constitute a public fire, health, or safety hazard.

36. Admitted in part and denied in part. It is admitted that the Court found Defendant guilty on three (3) citations and not guilty on three (3) citations at No. 95-0546 Criminal Term. It is denied that any of the property conditions identified constituted a public safety hazard, particularly since two (2) or the three (3) properties involved were vacant and the third property involved a missing railing on a porch which could only be accessed with a twenty (20) foot ladder.

37. Admitted.

38. Admitted in part and denied in part. It is admitted that on February 12, 1996, Defendant applied to the Borough for a permit to demolish the single building deeded as 134, 136, and 138 East High Street. It is denied that this building is situated in a lawfully designated historic district established under Pennsylvania Act 167 of June 13, 1961.

39. Admitted in part and denied in part. It is admitted that the Carlisle Historical Architectural Review Board (herein, "the HARB") recommended to Carlisle Borough Council (herein, "Borough Council") that Defendant's demolition permit be denied. Defendant has no knowledge of any written opinion provided by the HARB to Borough Council.

40. Admitted.

41. Admitted in part and denied in part. It is admitted

that Borough Council voted to deny Defendant a demolition permit for the properties at 134, 136, and 138 East High Street. It is denied that a full and complete hearing was conducted on the matter and the issues raised by Defendant. Further, it is denied that Borough Council determined that the buildings were structurally sound.

42. Admitted in part and denied in part. It is admitted that the Common Pleas Court at No. 96-2446 Civil Term (1) denied Defendant's request for a complete review of the case, (2) denied Defendant's request for access to the records of the Pennsylvania Historical and Museum Commission which allegedly certified the Carlisle Historic District, and (3) dismissed Defendant's appeal of the decision of the Carlisle Borough Council denying the demolition permit. It is denied that the Court affirmed the Borough Council's decision.

43. Admitted.

44. Admitted with qualification. It is admitted that on June 09, 1998, Defendant's request to the Pennsylvania Supreme Court to hear his appeal was denied without comment.

45. Admitted in part and denied in part. It is admitted that on July 09, 1998, Defendant filed a lawsuit in the U.S. (Federal) District Court for the Middle District of Pennsylvania against the Borough of Carlisle and against the Pennsylvania Historical and Museum Commission over the Carlisle Historic District. It is denied that Defendant made the identical claims in the Federal lawsuit as those in the state courts.

46. Denied. It is denied that East High Street properties other than 138 East High Street have been found in

violation of the BOCA Code by the Court. It is denied that Defendant has refused to remove the front porch of 138 East High Street which was determined by the Court to be a public safety hazard. To the contrary, the Borough requested and were granted a Preliminary Injunction by the Court to prevent him from removing the front porch of 138 East High Street which the Borough had previously cited as a public safety hazard. Further, Borough officials have denied Defendant a permit to remove the front porch.

47. Admitted with qualification. It is admitted that the District Justice found the Defendant guilty of 158 property maintenance code violations (1) at the North Bedford Street garage to which Defendant has already made $55,000 in repairs and (2) at 138 East High Street which Defendant has been attempting to demolish since February 1996. On appeal to the Common Pleas Court, Defendant was found guilty on four (4) citations and not guilty on one hundred and fifty-four (154) citations.

48. Admitted with qualification. It is admitted that on May 11, 1998, Defendant applied for a building permit to rebuild an existing garage door opening at 25 North Bedford Street. Because Carlisle's Historic District was certified in violation of the Fifth Amendment of the United States Constitution, its status is limited to that of a named area. As such, compliance with recommended standards for historic preservation is strictly voluntary.

49. Admitted in part and denied in part. It is admitted that the Borough sent Defendant a letter dated May 20, 1998 giving their reasons for denying the building permit. It is denied that the reasons cited by the Borough for denying the permit are valid.

50. Admitted with qualification. It is admitted that Defendant commenced to perform the work in order to continue building repairs mandated by the Borough in order to eliminate alleged public safety hazards.

51. Admitted.

52. Admitted in part and denied in part. It is admitted that Defendant provided the Borough with additional technical information concerning the sizing of steel members to be used in rebuilding the garage door opening. See response to allegation No. 48.

53. Admitted in part and denied in part. It is admitted that Defendant continued to work on rebuilding the garage door opening. It is denied that the permit would have been of any benefit in the construction effort.

54. Admitted with qualification. It is admitted that Defendant continues to make repairs to the garage at 25 North Bedford Street. Defendant attempts to obtain building permits, in spite of continuing harassment from Borough officials.

55. Admitted with qualification. It is admitted that Defendant received a letter from the Borough dated July 17, 1998 in which Borough officials continued their harassment by again rejecting Defendant's permit application.

56. Denied. It is denied that "on numerous prior instances Barrett has commenced exterior work without securing the necessary approvals."

57. Denied. It is denied that Defendant is always fully aware of the Borough's requirements with respect to

building permits and historic district Certificates of Appropriateness. The Borough's bureaucratic propensity to change procedures and forms and the secrecy of its deliberations (i.e., the alleged certification of the Historic District, etc.) make it impossible for average citizens to know what rights they have left.

58. Denied. It is denied that only one of Defendant's properties is fit for human habitation. It is denied that the Borough has condemned any of Defendant's property other than the garage at 25 North Bedford Street.

59. Denied. It is denied that any of Defendant's properties, other than the house at 138 East High Street, may violate the BOCA Code. It is further denied that any of Defendant's properties, other than the house at 138 East High Street, may eventually become a public safety hazard.

60. Denied. It is denied that Defendant has vowed not to comply with regulations of any lawfully established historic district.

61. Admitted in part and denied in part. It is admitted that the Borough sends the Defendant notices about monies owed and about how Borough officials intend to regulate Defendant's properties. It is denied that the Borough or the Pennsylvania Historical and Museum Commission ever gave the Defendant or other property owners Fifth Amendment due process protections in the alleged Historic District certification process.

62. Denied. It is denied that Defendant refuses to repair his properties within the Historic District. Defendant has made tens of thousands of dollars in improvements and repairs to his properties.

63. Denied. It is denied that Defendant is responsible for money spent by the Borough in its unlawful attempt to regulate the simple appearance of property in Carlisle. Defendant has no knowledge of the amount spent by the Borough in unlawful actions.

64. Denied. It is denied that Defendant has exhibited any pattern of not abiding by lawful regulation. It is denied that Defendant's properties are in an unacceptable condition.

65. Denied. It is denied that the Borough has sufficient information or qualified staff to evaluate the economic feasibility of restoring old buildings as evidenced by their inability to predict the performance of a single building such as the garage at 25 North Bedford Street.

66. Denied. It is denied that the Defendant has done anything other than try to protect himself from attempts by the Borough to take Defendant's property rights and vest property control in the hands of Borough officials.

67. Denied. It is denied that the Defendant has undertaken a coordinated plan to blight the Borough's Historic District.

68. Denied. It is denied that Defendant is an absentee owner, is not available, and is unwilling to make improvements and repairs to his properties.

69. Denied. It is denied that the Court has upheld BOCA Code violations against the present condition of Defendant's properties except against two (2) properties, the front porch at 138 East High Street and the garage at 25 North Bedford Street.

70. Admitted in part and denied in part. It is admitted

that the Borough has been attempting to enforce its unlawful Historic District regulations for more than five (5) years. It is denied that imposing unlawful regulations on all its citizens thereby makes it lawful.

71. Denied. It is denied that Defendant's removal of some buildings within the over-built Historic District has had a deleterious effect on surrounding properties. It is denied that Defendant's actions have caused harm to citizens of the Historic District.

72. Denied. It is denied that the Borough may lawfully take property rights through administrative or regulatory procedures other than through eminent domain proceedings.

73. Denied. It is denied that government can "take" property through equity jurisdiction.

WHEREFORE, Defendant, Robert H. Barrett respectfully requests your Honorable Court to enter an Order to:

A. Dismiss the Complaint; and

B. Lift the Preliminary Injunction against the property at 138 East High Street.

Dated: December 22, 1998 By: _____

ROBERT H. BARRETT
Defendant, *pro se*
134 East High Street
Carlisle, PA 17013

APPENDIX N

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY, PENNSYLVANIA

No. 98-4145 Equity Term

IN EQUITY

JURY TRIAL DEMANDED

BOROUGH OF CARLISLE, Plaintiff

v.

ROBERT H. BARRETT, Defendant

COMPLAINT

NOW, COMES the Plaintiff, Borough of Carlisle, by and through its Solicitor, Edward L. Schorpp, Esq., and requests equitable relief against Defendant, Robert H. Barrett, as follows:

1. Plaintiff Borough of Carlisle (herein, Borough) is an incorporated municipality and political subdivision of the Commonwealth of Pennsylvania with its principal offices at 53 W. South St., Carlisle, Cumberland County, Pennsylvania.

2. Defendant Robert H. Barrett (herein, Barrett) is an adult individual having an address of 134 East High Street, Carlisle, Cumberland County, Pennsylvania.

3. Although Barrett claims to be a resident of the Borough, it believes, and therefore avers, that Barrett is a resident of the Commonwealth of Virginia.

4. This action concerns real estate owned by Barrett, all of which is situated in the Borough of Carlisle, Cumberland County, Pennsylvania.

5. On August 14, 1975, the Borough established an Historic Preservation District (herein, "historic district") by Ordinance No. 1197.

6. On September 22, 1988, by Ordinance No. 1600, the Borough adopted comprehensive zoning regulations which incorporated substantially all of the text of the historic district as previously ordained.

7. Barrett is the owner of record of eleven properties located within the Borough of Carlisle historic district.

8. Barrett owns two residential properties on South East Street, numbers 25 and 29.

9. Barrett owns three residential properties on East Liberty Avenue, numbers 118, 122 and 141.

10. Barrett owns three properties on Bedford Street, 25 North Bedford Street, a commercial property, and numbers 35 and 37 South Bedford Street, both residential properties.

11. Barrett owns three properties on East High Street, numbers 134, 136, and 138.

12. Barrett has been found guilty of numerous violations of the Borough of Carlisle Property Maintenance Code (herein, "Code"), all related to the inadequate maintenance and repair of his properties.

13. In June of 1979, Barrett's property at 118 East Liberty Avenue suffered fire damage.

14. Barrett did not repair the fire damage.

15. In 1984, Barrett was prosecuted twice for commencing the demolition of the structure at 118 East Liberty Avenue without a required building permit.

16. Barrett eventually obtained a building permit and the structure at 118 East Liberty Avenue was demolished.

17. In 1992, Barrett filed a request with the Borough Council for a Certificate of Appropriateness and a building permit to demolish the structure at 25 South East Street, which request was denied.

18. Without the required approvals, Barrett proceeded to gut the interior of the structure at 25 South East Street, piece by piece, and stored the debris in the large garage structure he owns at 25 North Bedford Street.

19. Because it was intentionally gutted, the South East Street building became structurally deficient and economically unfeasible to repair.

20. Barrett intended to make this building structurally deficient and economically unfeasible to repair so that Borough Council would have no choice but to allow its demolition.

21. Thereafter, upon Barrett's second request, Borough Council reluctantly granted the approvals and Barrett demolished the building.

22. Barrett owns a garage structure at 25 North Bedford Street which he has used to store debris from the dismantling of his other properties in the historic district.

23. In 1984, Borough Code Enforcement Officer, Dwain McLaughlin, forwarded written correspondence to

Barrett detailing code violations at his various properties, including 25 North Bedford Street.

24. Thereafter, the roof at 25 North Bedford Street fell into further disrepair and additional code violations became apparent.

25. In 1993, Barrett was prosecuted for code violations at this property and was found guilty by Judge George E. Hoffer, now President Judge, at No. 1993-00807 Criminal Term; see Exhibit "A" attached hereto and incorporated herein.

26. In 1994, Barrett was prosecuted for code violations at 25 North Bedford Street and the two South East Street properties and was found guilty by Judge Edgar B. Bayley at No. 1994-00583; see Exhibit "B" attached hereto and incorporated herein.

27. On appeal, the Commonwealth Court of Pennsylvania upheld both of the preceding guilty judgments; see Exhibits "A" and "B."

28. On December 21, 1994, upon appeal by Barrett of borough council's local agency decision ordering the condemnation of his property at 25 North Bedford Street as unfit for occupancy, Judge Edgar B. Bayley affirmed council's determination at Nos. 94-2346 and 94-2967 Civil Term; see Exhibits "C & D" attached hereto and incorporated herein.

29. Barrett's appeal of the condemnation order to the Commonwealth Court was dismissed. (No. 208 C.D. 1995)

30. On both October 5, 1995, and September 9, 1996, Barrett was found to be in contempt of the condemnation

order for occupying the property in violation of the condemnation orders; see Exhibits "E" and "F" attached hereto and incorporated herein.

31. On October 11, 1996, sixty citations, covering the period from March 1, 1995 through October 1, 1996, were filed against Barrett for his unabated violations of the code at the North Bedford Street property.

32. On July 24, 1997, at No. 97-0378 Criminal Term, Judge Edgar B. Bayley found Barrett guilty on twenty of the sixty citations; see Exhibit "G" attached hereto and incorporated herein.

33. In his accompanying Opinion, Judge Bayley expressly found that there was sufficient evidence to find Barrett guilty beyond a reasonable doubt on all of the citations, but tempered his verdict in what he stated was an effort to strike a balance between the Borough's interest in having the property repaired and the effect the imposition of numerous fines would impose on Barrett's financial ability to make the repairs; see Exhibit "H" attached hereto and incorporated herein.

34. To this date, Barrett has not paid all of the fines associated with the 1997 guilty verdicts, nor has he made the necessary repairs to the property on 25 North Bedford Street.

35. In an August 29, 1994, letter from Brian Dennis, Borough of Carlisle Code Manager, Barrett was informed of numerous violations of the code at his properties within the historic district, including violations at 35 South Bedford Street, 37 South Bedford Street, 25 South East Street, 29 South East Street, 134 East High Street and 138 East High Street.

36. After no corrective repairs were made by Barrett, citations were filed against him and, on June 7, 1995, at No. 95-0546 Criminal Term, Judge Edgar B. Bayley found Barrett guilty of three citations: one for failure to maintain the front porch at 138 East High Street, one for a disintegrating rear porch at 37 South Bedford Street and one for a missing hand rail on a porch at 29 South East Street; see Exhibit "I" attached hereto and incorporated herein.

37. On February 14, 1996, at No. 95-1938, Judge Bayley again found Barrett guilty of violating the code for failure to maintain and repair the front porch at 138 East High Street; see Exhibit "J" attached hereto and incorporated herein.

38. On February 12, 1996, Barrett applied to borough council for a Certificate of Appropriateness and a permit to demolish the three connected structures at 134, 136 and 138 East High Street, all located in the historic district and centrally located on a main street.

39. At its March 18, 1996, meeting, the Carlisle Historical Architectural Review Board denied Barrett's application and issued a detailed, written opinion containing the reasons for denial on April 3, 1996.

40. On April 8, 1996, borough council held a public hearing on Barrett's request.

41. After a full and complete hearing, including testimony from Barrett, a historic preservation specialist, a representative of the Pennsylvania Historical and Museum Commission, and concerned neighbors, borough council voted to deny Barrett's request for permission to demolish the East High Street properties because the buildings were found

to be a significant contribution to the historic district and structurally sound.

42. Barrett appealed this denial and, on May 5, 1997, at No. 96-2446 Civil Term, Judge Edgar B. Bayley affirmed borough council's decision; see Exhibit "K" attached hereto and incorporated herein.

43. Barrett appealed to the Commonwealth Court which affirmed Judge Bayley's decision on January 29, 1998, at No. 1431 C.D. 1997; see Exhibit "L" attached hereto and incorporated herein.

44. Barrett again appealed, and on June 9, 1998, the Pennsylvania Supreme Court issued an Order denying his Petition; see Exhibit "M" attached hereto and incorporated herein.

45. Notwithstanding his repeated failures to invalidate the Borough's historic District in the state courts, on July 9, 1998, Barrett filed a civil action against the Borough in the U.S. District Court for the Middle District of Pennsylvania, which action sets forth the identical claims he made in the state courts; see Exhibit "N" attached hereto and incorporated herein by reference.

46. Barrett has continued to refuse to make the necessary repairs to the East High Street properties.

47. On May 15, 1998, District Justice Paula P. Correal found Barrett guilty of 158 property maintenance code violations at the North Bedford Street and East High Street properties and fined him $106,200.00, plus costs of $5,530.00, for a total of $111,730.00; see Exhibit "O" attached hereto and incorporated herein.

48. On May 11, 1998, Barrett applied for a building permit to perform exterior work on the North Bedford Street property, but refused to apply for a Certificate of Appropriateness under the Borough's historic district regulations.

49. By letter of May 20, 1998, the Borough informed Barrett of the reasons why a building permit would not be issued; see Exhibit "P" attached hereto and incorporated herein.

50. Despite not having been issued a permit, Barrett commenced to perform the work.

51. On June 2, 1998, the Borough served a stop work order upon Barrett; see Exhibit "Q" attached hereto and incorporated herein.

52. By letter of June 22, 1998, Barrett provided additional information concerning his building permit request and reiterated his refusal to submit to the historic review process; see Exhibit "R" attached hereto and incorporated herein by reference.

53. Barrett continued to perform work on the property without benefit of a permit on July 14, 15, and 19, 1998.

54. Despite the issuance of the stop work order, Barrett continues to this date to perform the work without having a building permit.

55. By letter of July 17, the Borough again outlined to Barrett its refusal to issue the requested permit; see Exhibit "S" attached hereto and incorporated herein by reference.

56. On numerous prior instances Barrett has commenced exterior work without securing the necessary

approvals.

57. At all times relevant herein, Barrett was fully aware of the Borough's requirements with respect to building permits and historic district Certificates of Appropriateness.

58. The Borough believes, and therefore avers, that of the eleven properties Barrett owns within the historic district, at most only one is currently fit for human habitation.

59. The Borough asserts that of the buildings Barrett owns within the historic district, none are in conformity with the code and most, if not all, pose a hazard to the public and surrounding structures.

60. Barrett has repeatedly vowed not to comply with the Borough's historic district regulations, as he refuses to recognize their validity and applicability to his properties.

61. The Borough has consistently and continually notified Barrett in an effort to secure his voluntary compliance with the code and historic district regulations prior to resorting to the filing of citations.

62. In spite of these accommodations, Barrett continues to refuse to repair and maintain the properties he owns in the historic district and to comply with its regulations.

63. To date, Barrett has cost the Borough over $25,000 in legal fees.

64. Barrett's persistent pattern of refusing to comply evidences his intent not to abide by applicable regulations and not to restore his properties to an acceptable condition.

65. Upon information and belief, the Borough believes, and therefore avers, that Barrett's remaining

buildings can be salvaged and restored to comply with the code and the historic district regulations without causing undue economic hardship.

66. Barrett intends to allow his eleven properties to fall into such disrepair that no economic value will remain in them so that demolition can be effected, thus having a deleterious effect on the surrounding properties and the historic district.

67. Barrett has undertaken a coordinated plan to blight the Borough's historic district.

68. As an absentee owner, Barrett is not available, and is unwilling, to undertake appropriate maintenance and repairs of his eleven properties within the Borough's historic district.

69. The code violations at Barrett's properties have continued unabated, notwithstanding the filing of multiple actions by the Borough, criminally through the filing of citations and administratively through the civil condemnation action.

70. The Borough has tried amicably and legally for over five years to compel Barrett to meet the minimum standards its other citizens are required to adhere to; if equitable relief is not granted, the Borough will continue to be frustrated in its legitimate efforts to enforce its code and historic district regulations.

71. Barrett's refusal to comply with the historic district regulations by failing to properly maintain his buildings and by making exterior repairs without the approvals required thereunder will cause a permanent deleterious effect on the surrounding properties and the

historic district in general, thereby causing irreparable harm to citizens of the Borough and to the owners of surrounding properties.

72. The statutory and administrative remedies available to the Borough have been inadequate to insure enforcement of its code and historic district regulations.

73. Equity jurisdiction will avoid a future multiplicity of actions.

WHEREFORE, the Borough respectfully requests your Honorable Court to enter an Order for the following equitable relief:

A. That an agent be appointed to manage Barrett's eleven properties within the historic district in order to bring the properties into compliance with the code and historic district regulations; and

B. That an injunction issue against Barrett prohibiting him from performing any repairs or alterations to any of his properties without first receiving certificates of appropriateness and building permits for such work; and

C. That the Borough be awarded its reasonable attorneys fees in this action, and all previous actions, between the parties; and

D. Such other equitable relief as the Court deems appropriate under the circumstances.

Edward L. Schorpp, Esquire
Solicitor, Borough of Carlisle

APPENDIX O

Constitutional and Statutory Provisions Involved in the Case

1. The Fourth Amendment to the United States Constitution, which provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

2. The Fifth Amendment to the United States Constitution, which provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

3. The Fourteenth Amendment to the United States Constitution, Section 1,which provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the

United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

4. Title 28, United States Code, Section 1257(a) (State courts of appeals; certiorari), which provides:

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

5. Title 42, United States Code, Section 1983 (Civil action for deprivation of rights), which provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured

in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.